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No Fee ~ Gov't Code § 6103

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

Fix the City, Inc., a California Nonprofit
Corporation,

Petitioner,

vs.

City of Los Angeles, a Municipal
Corporation; The City of Los Angeles
City Council; and Does 1 Through 10,
inclusive,

Respondent.

Case No.: 23STCP04410

Honorable James C. Chalfant
Department 85

**City Responses to Petitioner's Objections to
the Declarations of Cervantes and Wee**

Action Filed: December 5, 2023

Trial Date: November 14, 2024
Time: 9:30 a.m.
Dept: 85

Respondent City of Los Angeles ("City") submits the following responses to the objections of Petitioner Fix the City ("Fix") to the Declarations of Roy Cervantes and Charles Wee filed by the City in support of the City's trial brief. The City has incorporated all of the text of Fix's objections and objection formatting below and inserted the City's responses to each objection.

1 **I. PETITIONER OBJECTIONS TO DECLARATION OF ROY CERVANTES.**

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3 **OBJECTION NUMBER 1.**

4 **Materials Objected To:**

5 Paragraph 3:

6 “LADOT operates off-street public parking facilities including parking lots for the City
7 of Los Angeles. Among those parking lots has been Lot 707 at the intersection of Midvale
8 Avenue and Pico Boulevard. City general fund monies derived from public taxes are used to
9 pay for the parking enforcement operation component of LADOT parking facilities, as is the
10 case for Lot 707. The Office of Parking Enforcement and Traffic Control issues tickets for
11 violation of parking facility payment rules and the Parking Operations and Support Division
12 oversees the collection of payment for those tickets for violation. Staff from the Office of
13 Parking Enforcement and Traffic Control and the Parking Operations and Support Division are
14 funded by the General Fund.”

15 **Grounds for Objection:**

16 Inadmissible secondary evidence. “Under the secondary evidence rule, oral testimony
17 is generally inadmissible to prove the content of a writing. (See Evid. Code, § 1523, subd.
18 (a).)” Mai v. HKT Cal, Inc. (2021) 66 Cal.App.5th 504, 514, fn. 4. Mr. Cervantes testifies to
19 the alleged source of the payments for parking enforcement. Certainly, there are records
20 showing the funding for parking enforcement for parking lots. The testimony violates the
21 secondary evidence rule.

22 **City Response to Objection:**

23 Mr. Cervantes’ declaration nowhere references the contents of any document. Instead,
24 based upon his experience, he offers sworn testimony that City general fund money pays for
25 parking enforcement operations at Lot 707, the site of the Midvale Project challenged by Fix.
26 (Decl., ¶ 3). He establishes he possesses the foundation to know this fact by stating his three
27 years’ experience as the budget director for the Los Angeles Department of Transportation, six
28 years’ prior experience at the at the City’s Office of the City Administrative Officer doing

1 budgetary and administrative analysis and two prior years’ experience working for the Office
2 of the City Controller. (*Id.*, ¶ 2). While documents likely exist also confirming Mr. Cervantes’
3 general knowledge of City operations, his declaration does not cite information stated in
4 documents.

5 This is different than the evidence at issue in *Mai v. HKT Cal, Inc.* (2021) 66
6 Cal.App.5th 504, cited by Fix. There, a witness attempted to testify as to the amount of legal
7 service bills supporting an attorney’s fee motion, however the witness lacked both personal
8 knowledge of the services provided and did not present the actual bills to the Court. (*Id.*, at pp.
9 261-262). Here. Mr. Cervantes does not purport to state the amount of specific money
10 expended from the City’s general fund to support Lot 707 operations, but rather he testifies to
11 general operations. Unlike the witness in *Mai*, Mr. Cervantes establishes he possess the
12 foundation to know the general information he states. The *Mai* witness, moreover, presented
13 testimony describing more than just the general billing practices of the lawyers there and his
14 testimony was offered to support the specific amount of fees and services for which those bills
15 were incurred. (*Id.*) Mr. Cervantes offers no similar testimony. The objection should be
16 overruled.

Ruling By The Court	Sustained: _____	Overruled: _____
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19 **II. PETITIONER OBJECTIONS TO DECLARATION OF CHARLES WEE.**

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21 **OBJECTION NUMBER 1.**

22 **Materials Objected To:**

23 Page 3, line 12:

24 “unique system of modular units that can be used as dwelling units and as program
25 operational space and which were used to create the Midvale Project.”

26 **Grounds for Objection:**

27 Lack of foundation; speculative. “Cases dismissing expert declarations in connection
28 with summary judgment motions do so on the basis that the declarations established that the

1 opinions were either speculative, lacked foundation, or were stated without sufficient
2 certainty.’ [Citation.] ‘[U]nder Evidence Code section 801, the trial court acts as a gatekeeper
3 to exclude speculative or irrelevant expert opinion.’ [Citation.]” Sanchez v. Kern Emergency
4 Medical Transportation Corp. (2017) 8 Cal.App.5th 146, 155-156.

5 Mr. Wee’s declaration is styled as an expert opinion. The opinion that the LifeArk
6 system is unique lacks foundation because Mr. Wee provides no evidence of other systems that
7 exist for sheltering the homeless and thus provides no foundation for his opinion. It is thus
8 also speculative.

9 **City Response to Objection:**

10 Mr. Wee’s declaration is not offered as expert testimony but establishes his foundation
11 as a lay witness to testify to the matters stated in his declaration, including his opinion that the
12 LifeArk modular system of housing and operational units is unique, based upon his own
13 percipient knowledge as authorized by Evidence Code sections 702 and 800. Mr. Wee testifies
14 he is CEO of LifeArk and has worked at LifeArk since 2017 to design and develop
15 “innovative, environmentally, friendly, cost-effective, highly configurable, and livable systems
16 that can be implemented quickly to shelter people experiencing homelessness.” (Decl., ¶ 2:8-
17 14). He states he participated in all stages of contracting, design, and fabrication of LifeArk’s
18 units for the Midvale Project. (*Id.*, ¶ 2:19-22). He devised the patented system of modular
19 dwelling and operational units made by LifeArk used for the Midvale Project, relying on seven
20 U.S. patents held by Mr. Wee, documented at Exhibit A to his declaration. (*Id.*, ¶¶ 2 and 4).
21 This testimony alone demonstrate’s Mr. Wee’s foundation to know or offer a lay opinion that
22 the LifeArk modular system is unique in its field. Yet he goes further, providing percipient
23 testimony detailing the nature of the LifeArk units he helped design to fulfill LifeArk’s
24 contract with the City concerning the Midvale Project. He testifies, those units are “not off-the-
25 shelf products waiting for a buyer. LifeArk provides a one-of-a-kind modular housing product
26 using my patented design of a molded composite plastic structure” (*Id.* ¶ 5:14-18). He further
27 states that each LifeArk system requires, “specific designs for dwelling and program units to
28 meet site and program requirements.” (*Id.*)

1 Moreover, as the CEO of a company formed to create homeless shelters since 2017,
2 Mr. Wee’s declaration establishes his knowledge of the field of such shelter systems against
3 which LifeArk competes for work. (See *id.*, ¶ 2). The declaration more than demonstrates Mr.
4 Wee possesses sufficient lay witness foundation to state that the LifeArk system is unique.

5 Finally, this fact is relevant to the City’s opposition to Fix’s trial brief arguments
6 asserting the LifeArk contract was required to be competitively bid. (Fix Trial Brief, pp. 18-
7 20). As the City demonstrated in its moving papers, there are many reasons Fix’s contention is
8 incorrect. One is that City Charter section 371(e)(10) excuses requirements for competitive
9 bidding where the common law excuses it. (City Trial Brief, p. 25:14-18 [Charter at Exh. 21]).
10 As the City documented, the common law excuses bidding of unique systems such as the
11 LifeArk modular homeless shelter system, citing *Graydon v. Pasadena Redevelopment Agency*
12 (1980) 104 Cal.App.3d 631, 635–636; *San Diego Service Authority for Freeway Emergencies*
13 *v. Superior Court* (1988) 198 Cal.App.3d 1466, 1475. (*Id.*, at p. 25:19-25).

14 Of course, Mr. Wee’s statement that LifeArk’s system is unique is not the sole proof
15 of its uniqueness documented by his declaration. He provides facts within his knowledge
16 showing its uniqueness, including LifeArk’s use of U.S. patents which City Charter section
17 371(e)(1) demonstrating an independent basis excusing competitive bidding. (Decl., ¶ 5 and
18 Exh. A; City Trial Brief, p. 25:13-19; Exh. 21 [Charter].) He also testifies to his knowledge of
19 the unique Midvale site-specific conditions for which LifeArk was required to develop unique
20 design and fabrication solutions. (Decl., ¶ 7). The declaration more than demonstrates Mr.
21 Wee’s foundation to know or opine as a lay witness that the LifeArk system is unique. The
22 objection should be overruled.

Ruling By The Court	Sustained: _____	Overruled: _____
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1 **OBJECTION NUMBER 2.**

2 **Materials Objected To:**

3 Page 3, line 23:

4 “allowing more people to be sheltered at each project location compared to other
5 existing options.”

6 **Grounds for Objection:**

7 Lack of foundation; speculative. “Cases dismissing expert declarations in connection
8 with summary judgment motions do so on the basis that the declarations established that the
9 opinions were either speculative, lacked foundation, or were stated without sufficient
10 certainty.’ [Citation.] ‘[U]nder Evidence Code section 801, the trial court acts as a gatekeeper
11 to exclude speculative or irrelevant expert opinion.’ [Citation.]” Sanchez v. Kern Emergency
12 Medical Transportation Corp. (2017) 8 Cal.App.5th 146, 155-156.

13 Mr. Wee’s declaration is styled as an expert opinion. The opinion that the LifeArk
14 system allows more people to be sheltered lacks foundation because Mr. Wee provides no
15 evidence of other systems that exist for sheltering the homeless and thus provides no
16 foundation for his opinion. It is thus also speculative.

17 **City Response to Objection:**

18 Again, Mr. Wee’s declaration presents lay testimony for which opinion testimony is
19 allowed based upon percipient knowledge. (Evid. Code §§ 702 and 800). He has been the CEO
20 of LifeArk since 2017, where he has worked to “design and development of innovative,
21 environmentally friendly, cost-effective, highly configurable, and livable systems that can be
22 implemented quickly to shelter people experiencing homelessness.” (Decl., ¶ 2:8-13). Based
23 upon his role designing and creating the LifeArk system, he demonstrates the lay foundation to
24 know the industry in which his company competes to provide homeless shelter systems, thus,
25 to know that the LifeArk system allows “more people to be sheltered at each project location
26 compared to other existing options.” Fix’s objection should be overruled.

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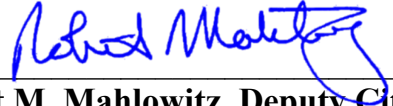
Ruling By The Court	Sustained: _____	Overruled: _____
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Dated: November 8, 2024

Hydee Feldstein Soto, City Attorney
Valerie L. Flores, Chief Deputy City Attorney
John W. Heath, Chief Assistant City Attorney

By: 
Robert M. Mahlowitz, Deputy City Attorney
Attorney for Respondent, City of Los Angeles

1 **PROOF OF SERVICE**

2 I, the undersigned, say: I am over the age of 18 years and not a party to the within
3 action or proceeding. My business address is 200 North Main Street, 701 City Hall East, Los
4 Angeles, California 90012.

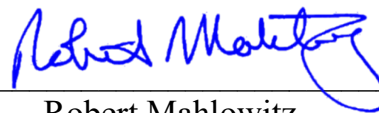
5 On November 8, 2024, I served the foregoing documents described as: **City**
6 **Responses to Petitioner’s Objections to the Declarations of Cervantes and Wee** on all
7 interested parties in this action as follows:

8 **Robert P. Silverstein**
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21 **FIX THE CITY, INC.**
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23 **[X] BY ELECTRONIC MAIL** – I electronically transmitted the document listed above to
24 the email address stated above which has been confirmed for each addressee stated
25 above. My electronic service address is Robert.Mahlowitz@lacity.org.

26 I declare that I am employed in the office of a member of the bar of this court at whose
27 direction the service was made. I declare under penalty of perjury under the laws of the State
28 of California that the foregoing is true and correct. Executed on November 8, 2024, at Los
Angeles, California.

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30 Robert Mahlowitz